

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3965 of 1996

and

CIVIL APPLICATION NO. 554 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgement?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

CADMACH MACHINERY CO.PVT.LTD.

Versus

AHMEDABAD MUNICIPAL CORPORATION

Appearance:

MS PJ DAVAWALA for Petitioner

MR KS JHAVERI for Respondent Ahmedabad Municipal Corporation

CORAM : MR.JUSTICE M.R.CALLA and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 28/04/99

ORAL JUDGEMENT (per M.R. Calla, J.)

Heard learned Counsel. This appeal is directed against the order dated 6th September 1996 passed by the Small Causes Court, at Ahmedabad, in M.V.Appeal No.19208

of 1993 whereby the appeal of the present appellant, i.e. Cadmach Machinery Co.Pvt. Ltd. under Sec.406 of the BPMC Act, was rejected by the Small Causes Court with regard to the assessment of the property tax under the Taxation Rules under BPMC Act, for the year 1993-94. The present appeal was preferred before this Court on 19th September 1996 along with a Civil Application No.8021 of 1996 seeking condonation of delay for a period of 142 days in filing the appeal against the Small Causes Court's order dated 6th September 1996 as aforesaid. Even this application seeking condonation of delay for a period of 142 days itself was dismissed in default on 17th January 1998 and the same was restored by the order passed by the Court on 2nd February 1998 in Misc. Civil Application No.162 of 1998, on the condition of depositing a sum of Rs.2,000/-. The order sheet dated 13th February 1998 recorded in Misc. Civil Application No.162 of 1998 shows that the said amount of Rs.2,000/was deposited by the appellant Company. Thereafter on 17th February 1999 the Civil Application No.8021 of 1996 was finally decided and the delay was condoned and now the main appeal has come up before us. Mr.K.S.Zhaveri has already entered appearance on behalf of the Ahmedabad Municipal Corporation.

3. Learned Counsel for the appellant has submitted that right from the assessment year 1986-87 the Municipal Corporation had assessed the Gross Rateable Value (GRV) at Rs.6,01,320/-, but against the assessment of year 1990-91, the appellant Company had preferred an appeal before the Small Causes Court, and for that year 1990-91, the Small Causes Court had passed the order in the appeal in favour of the appellant Company fixing the GRV at Rs.61,272/-. Thereafter, the Municipal Corporation again fixed the GRV for the year 1991-92 at Rs.6,01,320/-, the same was followed for the year 1992-93 and the same was followed for the year 1993-94. The learned Counsel for the appellant has submitted before us that even against the assessment of the years 1991-92 and 1992-93, the Company had preferred Appeals under Section 406 of the BPMC Act before the Small Causes Court and those appeals were also decided against the appellant Company and against the decision in the appeals under Section 406 by the Small Causes Court, First Appeals were filed by the Company before this Court being First Appeals Nos.1963 of 1996 and 1964 of 1996 for the years 1991-92 and 1992-93 which are pending. It is admitted before us that these two appeals are not admitted so far, but whether those appeals have been filed after the prescribed time and as to whether any notice has been issued in those appeals or not is not made known to this Court. It is also

submitted that for the time-barred appeals, the applications seeking condonation of delay have also been filed, but so far the delay has not been condoned. Meanwhile, the present appeal for the year 1993-94 has come up before this Court.

4. We have also heard learned Counsel for the Ahmedabad Municipal Corporation, Mr.K.S.Zhaveri who has appeared in these proceedings as the notice with regard to the application for condonation of delay had been served upon the Ahmedabad Municipal Corporation. Mr.Zhaveri has submitted that for every year a public notice is issued by the Municipal Corporation under Rule 16 and in response to that notice under Rule 16, if any objections are filed by any party, such objections are considered and decided and subject to such orders passed by the Municipal Corporation itself on the objections filed in response to the notice under Rule 16, the GRV is followed and on that basis, the bills are issued.

5. We have heard learned Counsel for both the sides and also gone through the impugned order dated 6th September 1996. While it is correct proposition to say that each and every assessment order has to be taken as a separate unit for each year in terms of the law laid down by this Court in the case of Municipal Corporation of City of Ahmedabad v. Oriental Fire and General Insurance Co. Ltd., reported in AIR 1994 Guj. 167, the fact remains that for the year in question, i.e. 1993-94, the appeal was not filed against any order as such under Section 406 of the BPMC Act before the Small Causes Court. The impugned order itself says that the appeal was filed against the demand made in the bill. If at all the appellant herein had raised any grievance in response to the public notice under Rule 16, the same must have been considered and decided by the Municipal Corporation and it is that order which should have been made the subject matter of challenge before the Small Causes Court rather than the demand made in the bill. The learned Counsel for the appellant has submitted that no such order was made available and therefore, at the fag end of the arguments during the course of dictation of this order, the learned Counsel has argued that when the appellant made inquiry with the Municipal Corporation, they were told that the objections filed by them before the Municipal Corporation were time barred and, therefore, there was no question of considering the same. If that be so, yet the Company could have applied for a copy of such order by which the objections were declined to be considered on the ground that they were time barred. In any case, these facts do not appear to have

been brought to the notice of the Small Causes Court where the appeal was preferred under Section 406 of the BPMC Act as is obvious from the contents of para 3 wherein the Small Causes Court has clearly held out that, "In the instant case, no complaint has been filed by the appellant before the Appellate Officer of the Municipal Corporation prior to filing of this appeal. The appeal is clearly only against the bill given to the appellant and not against the order of the Appellate Officer deciding the complaint of the appellant. The appellant had sufficient opportunity to file complaint before the Commissioner or the Appellate Officer of the Municipal Corporation but he has not chosen to do so and therefore this appeal filed only against the bill is not maintainable."

6. The very fact that the Division Bench has held that the assessment with regard to each and every year is separate, the grievance cannot be made with regard to the assessment for the year 1993-94 merely because the Small Causes Court had fixed the GRV at Rs.61,272/- for the year 1990-91.

7. Besides this, it is clearly discernible from the facts of the present case that after year 1990-91, for all subsequent years, i.e. 1991-92, 1992-93, and 1993-94, the Municipal Corporation has acted in accordance with law by giving notice under Rule 16 of the Taxation Rules and therefore, it cannot be said that the order which had been passed for the year 1990-91 fixing the GRV at Rs.61,272/- by the Small Causes Court should have been followed for all subsequent years. Even if for a given year a particular GRV is fixed, it is open for the Municipal Corporation to alter the same for any subsequent year after giving the notice as contemplated under the Taxation Rules under Chapter VIII of the BPMC Act. It cannot be disputed that this requirement was followed by the Municipal Corporation and in the facts and circumstances of this case, we find no substance in this appeal. The same is hereby dismissed, with no order as to costs.

8. Whereas the main appeal itself has been decided and dismissed, there is no question of passing any order in the Civil Application No.554 of 1998 for stay. The Civil Application No.554 of 1998 is hereby disposed of accordingly.

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